

AMENDED IN SENATE MAY 16, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 426

Introduced by Assembly Member Bonnie Lowenthal

February 14, 2011

An act to amend Section 640 of the Penal Code, and to amend Section 99580 of the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 426, as amended, Bonnie Lowenthal. Transit fare evasion.

Existing law authorizes certain transit operators to adopt and enforce an ordinance to impose and enforce civil administrative penalties for fare evasion or passenger misconduct, other than by minors, on or in a transit facility or vehicle in lieu of the criminal penalties otherwise applicable, with specified administrative adjudication procedures for the imposition and enforcement of the administrative penalties, including an initial review and opportunity for a subsequent administrative hearing.

This bill would authorize the Southern California Regional Rail Authority *and the North County Transit District* to adopt and enforce such an ordinance. The bill would provide that a person cited under these ordinances adopted by transit operators shall be afforded an opportunity to complete the administrative process under the circumstances set forth in the ordinance.

Existing law requires fare evasion and passenger misconduct violation penalties to be deposited in the general fund of the county in which the violation occurred.

This bill, with respect to penalties collected by the Los Angeles County Metropolitan Transportation Authority or the Southern California Regional Rail Authority, would instead require the penalties to be deposited in the respective general funds of the authorities. *The bill would require those penalties collected by the North County Transit District to be deposited in the general fund of the County of San Diego.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 640 of the Penal Code is amended to
2 read:

3 640. (a) (1) Any of the acts described in paragraphs (1) to (5),
4 inclusive, of subdivision (b) is an infraction punishable by a fine
5 not to exceed two hundred fifty dollars (\$250) and by community
6 service for a total time not to exceed 48 hours over a period not to
7 exceed 30 days, during a time other than during the violator's hours
8 of school attendance or employment. Any of the acts described in
9 paragraphs (1) to (3), inclusive, of subdivision (c), upon a first or
10 second violation, is an infraction punishable by a fine not to exceed
11 two hundred fifty dollars (\$250) and by community service for a
12 total time not to exceed 48 hours over a period not to exceed 30
13 days, during a time other than during the violator's hours of school
14 attendance or employment. A third or subsequent violation of any
15 of the acts described in paragraphs (1) to (3), inclusive, of
16 subdivision (c) is a misdemeanor punishable by a fine of not more
17 than four hundred dollars (\$400) or by imprisonment in a county
18 jail for a period of not more than 90 days, or by both that fine and
19 imprisonment. Any of the acts described in subdivision (d) shall
20 be punishable by a fine of not more than four hundred dollars
21 (\$400), by imprisonment in a county jail for a period of not more
22 than 90 days, or by both that fine and imprisonment.

23 (2) This section shall apply only to acts committed on or in a
24 facility or vehicle of a public transportation system.

25 (b) (1) Eating or drinking in or on a system facility or vehicle
26 in areas where those activities are prohibited by that system.

27 (2) Disturbing another person by loud or unreasonable noise.

28 (3) Smoking in or on a system facility or vehicle in areas where
29 those activities are prohibited by that system.

1 (4) Expecting upon a system facility or vehicle.

2 (5) Skateboarding, roller skating, bicycle riding, roller blading,
3 or operating a motorized scooter or similar device, as defined in
4 Section 407.5 of the Vehicle Code in a system facility, vehicle, or
5 parking structure. This paragraph does not apply to an activity that
6 is necessary for utilization of the transit facility by a bicyclist,
7 including, but not limited to, an activity that is necessary for
8 parking a bicycle or transporting a bicycle aboard a transit vehicle,
9 if that activity is conducted with the permission of the transit
10 agency in a manner that does not interfere with the safety of the
11 bicyclist or other patrons of the transit facility.

12 (c) (1) Evasion of the payment of a fare of the system. For
13 purposes of this section, fare evasion includes entering an enclosed
14 area of a public transit facility beyond posted signs prohibiting
15 entrance without obtaining valid fare, in addition to entering a
16 transit vehicle without valid fare.

17 (2) Misuse of a transfer, pass, ticket, or token with the intent to
18 evade the payment of a fare.

19 (3) (A) Unauthorized use of a discount ticket or failure to
20 present, upon request from a transit system representative,
21 acceptable proof of eligibility to use a discount ticket, in
22 accordance with Section 99155 of the Public Utilities Code and
23 posted system identification policies when entering or exiting a
24 transit station or vehicle. Acceptable proof of eligibility must be
25 clearly defined in the posting.

26 (B) In the event that an eligible discount ticket user is not in
27 possession of acceptable proof at the time of request, any citation
28 issued shall be held for a period of 72 hours to allow the user to
29 produce acceptable proof. If the proof is provided, the citation
30 shall be voided. If the proof is not produced within that time period,
31 the citation shall be processed.

32 (d) (1) Willfully disturbing others on or in a system facility or
33 vehicle by engaging in boisterous or unruly behavior.

34 (2) Carrying an explosive, acid, or flammable liquid in a public
35 transit facility or vehicle.

36 (3) Urinating or defecating in a system facility or vehicle, except
37 in a lavatory. However, this paragraph shall not apply to a person
38 who cannot comply with this paragraph as a result of a disability,
39 age, or a medical condition.

(4) Willfully blocking the free movement of another person in a system facility or vehicle. This paragraph shall not be interpreted to affect any lawful activities permitted or First Amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.

(5) Willfully tampering with, removing, displacing, injuring, or destroying any part of any facility or vehicle of a public transportation system.

(e) (1) Notwithstanding subdivision (a), the City and County of San Francisco, the Santa Clara Valley Transportation Authority, the Sacramento Regional Transit District, Long Beach Transit, Foothill Transit, *the North County Transit District*, and the Alameda-Contra Costa Transit District may enact and enforce an ordinance providing that a person who is the subject of a citation for any of the acts described in subdivision (b) or (c) on or in a facility or vehicle described in subdivision (a) for which the City and County of San Francisco, the Santa Clara Valley Transportation Authority, the Sacramento Regional Transit District, Long Beach Transit, Foothill Transit, *the North County Transit District*, or the Alameda-Contra Costa Transit District has jurisdiction shall, under the circumstances set forth by the ordinance, be afforded an opportunity to complete an administrative process that imposes only an administrative penalty enforced in a civil proceeding. The ordinance for imposing and enforcing the administrative penalty shall be governed by Chapter 8 (commencing with Section 99580) of Part 11 of Division 10 of the Public Utilities Code and shall not apply to minors.

(2) Notwithstanding subdivision (a), the Los Angeles County Metropolitan Transportation Authority and the Southern California Regional Rail Authority may enact and enforce an ordinance providing that a person who is ~~subject to~~ *the subject of* a citation for any of the acts described in subdivision (b) or (c) on or in a facility or vehicle described in subdivision (a) ~~over~~ *for* which the Los Angeles Metropolitan Transportation Authority or the Southern California Regional Rail Authority has jurisdiction ~~may~~ *shall*, under the circumstances set forth by the ordinance, be ~~offered~~ *afforded* an opportunity ~~to resolve the citation by completing~~ *complete* an administrative process that imposes only an administrative penalty enforced in a civil proceeding. The

1 ordinance for imposing and enforcing the administrative penalty
2 shall be governed by Chapter 8 (commencing with Section 99580)
3 of Part 11 of Division 10 of the Public Utilities Code and shall not
4 apply to minors.

5 (f) For purposes of this section, a “facility or vehicle of a public
6 transportation system” means any of the following:

7 (1) A facility or vehicle of a public transportation system as
8 defined by Section 99211 of the Public Utilities Code.

9 (2) A facility of, or vehicle operated by any entity subsidized
10 by, the Department of Transportation.

11 (3) A facility or vehicle of the Southern California Regional
12 Rail Authority, whether owned or leased.

13 (4) A leased or rented facility or vehicle for which any of the
14 entities described in paragraph (1), (2), or (3) incurs costs of
15 cleanup, repair, or replacement as a result of any of those acts.

16 SEC. 2. Section 99580 of the Public Utilities Code is amended
17 to read:

18 99580. (a) (1) Pursuant to ~~subdivision (e)~~ *paragraph (1) of*
19 *subdivision (e)* of Section 640 of the Penal Code, the City and
20 County of San Francisco, the Santa Clara Valley Transportation
21 Authority, the Sacramento Regional Transit District, Long Beach
22 Transit, Foothill Transit, *the North County Transit District*, and
23 the Alameda-Contra Costa Transit District may enact and enforce
24 an ordinance to impose and enforce an administrative penalty for
25 any of the acts described in subdivision (b). The ordinance shall
26 include the provisions of this chapter and shall not apply to minors.

27 (2) Pursuant to paragraph (2) of subdivision (e) of Section 640
28 of the Penal Code, the Los Angeles County Metropolitan
29 Transportation Authority and the Southern California Regional
30 Rail Authority may enact and enforce an ordinance to impose and
31 enforce an administrative penalty for any of the acts described in
32 subdivision (b). The ordinance shall include the provisions of this
33 chapter and shall not apply to minors.

34 (b) (1) Evasion of the payment of a fare of the system.

35 (2) Misuse of a transfer, pass, ticket, or token with the intent to
36 evade the payment of a fare.

37 (3) Playing sound equipment on or in a system facility or
38 vehicle.

1 (4) Smoking, eating, or drinking in or on a system facility or
2 vehicle in those areas where those activities are prohibited by that
3 system.

4 (5) Expectorating upon a system facility or vehicle.

5 (6) Willfully disturbing others on or in a system facility or
6 vehicle by engaging in boisterous or unruly behavior.

7 (7) Carrying an explosive or acid, flammable liquid, or toxic or
8 hazardous material in a system facility or vehicle.

9 (8) Urinating or defecating in a system facility or vehicle, except
10 in a lavatory. However, this paragraph shall not apply to a person
11 who cannot comply with this paragraph as a result of a disability,
12 age, or a medical condition.

13 (9) (A) Willfully blocking the free movement of another person
14 in a system facility or vehicle.

15 (B) This paragraph shall not be interpreted to affect any lawful
16 activities permitted or first amendment rights protected under the
17 laws of this state or applicable federal law, including, but not
18 limited to, laws related to collective bargaining, labor relations,
19 or labor disputes.

20 (10) Skateboarding, roller skating, bicycle riding, or roller
21 blading in a system facility, including a parking structure, or in a
22 system vehicle. This paragraph does not apply to an activity that
23 is necessary for utilization of a system facility by a bicyclist,
24 including, but not limited to, an activity that is necessary for
25 parking a bicycle or transporting a bicycle aboard a system vehicle,
26 if that activity is conducted with the permission of the agency of
27 the system in a manner that does not interfere with the safety of
28 the bicyclist or other patrons of the system facility.

29 (11) (A) Unauthorized use of a discount ticket or failure to
30 present, upon request from a system representative, acceptable
31 proof of eligibility to use a discount ticket, in accordance with
32 Section 99155, and posted system identification policies when
33 entering or exiting a system station or vehicle. Acceptable proof
34 of eligibility must be clearly defined in the posting.

35 (B) In the event that an eligible discount ticket user is not in
36 possession of acceptable proof at the time of request, an issued
37 notice of fare evasion or passenger conduct violation shall be held
38 for a period of 72 hours to allow the user to produce acceptable
39 proof. If the proof is provided, that notice shall be voided. If the

1 proof is not produced within that time period, that notice shall be
2 processed.

3 (c) (1) The City and County of San Francisco, the Los Angeles
4 County Metropolitan Transportation Authority, the Santa Clara
5 Valley Transportation Authority, the Sacramento Regional Transit
6 District, the Southern California Regional Rail Authority, Long
7 Beach Transit, Foothill Transit, *the North County Transit District*,
8 and the Alameda-Contra Costa Transit District may contract with
9 a private vendor or governmental agency for the processing of
10 notices of fare evasion or passenger conduct violation, and notices
11 of delinquent fare evasion or passenger conduct violation pursuant
12 to Section 99581.

13 (2) For the purpose of this chapter, “processing agency” means
14 either of the following:

15 (A) The agency issuing the notice of fare evasion or passenger
16 conduct violation and the notice of delinquent fare evasion or
17 passenger conduct violation.

18 (B) The party responsible for processing the notice of fare
19 evasion or passenger conduct violation and the notice of delinquent
20 violation, if a contract is entered into pursuant to paragraph (1).

21 (3) For the purpose of this chapter, “fare evasion or passenger
22 conduct violation penalty” includes, but is not limited to, a late
23 payment penalty, administrative fee, fine, assessment, and costs
24 of collection as provided for in the ordinance.

25 (4) All fare evasion and passenger conduct violation penalties
26 collected by the processing agency in the City and County of San
27 Francisco shall be deposited to the general fund of the City and
28 County of San Francisco.

29 (5) All fare evasion and passenger conduct violation penalties
30 collected by the Long Beach Transit or Foothill Transit shall be
31 deposited in the general fund of the County of Los Angeles.

32 (6) All fare evasion and passenger conduct violation penalties
33 collected by the Los Angeles County Metropolitan Transportation
34 Authority shall be deposited in the general fund of the authority.

35 (7) All fare evasion and passenger conduct violation penalties
36 collected by the Santa Clara Valley Transportation Authority shall
37 be deposited in the general fund of the County of Santa Clara.

38 (8) All fare evasion and passenger conduct violation penalties
39 collected by the Sacramento Regional Transit District shall be
40 deposited in the general fund of the County of Sacramento.

1 (9) All fare evasion and passenger conduct violation penalties
2 collected by the Alameda-Contra Costa Transit District shall be
3 deposited in the general fund of the county in which the citation
4 is administered.

5 (10) All fare evasion and passenger conduct violation penalties
6 collected by the Southern California Regional Rail Authority shall
7 be deposited in the general fund of the authority.

8 *(11) All fare evasion and passenger conduct violation penalties*
9 *collected by the North County Transit District shall be deposited*
10 *in the general fund of the County of San Diego.*

11 (d) (1) If a fare evasion or passenger conduct violation is
12 observed by a person authorized to enforce the ordinance, a notice
13 of fare evasion or passenger conduct violation shall be issued. The
14 notice shall set forth the violation, including reference to the
15 ordinance setting forth the administrative penalty, the date of the
16 violation, the approximate time, and the location where the
17 violation occurred. The notice shall include a printed statement
18 indicating the date payment is required to be made, and the
19 procedure for contesting the notice. The notice shall be served by
20 personal service upon the violator. The notice, or copy of the
21 notice, shall be considered a record kept in the ordinary course of
22 business of the issuing agency and the processing agency, and
23 shall be prima facie evidence of the facts contained in the notice
24 establishing a rebuttable presumption affecting the burden of
25 producing evidence.

26 (2) When a notice of fare evasion or passenger conduct violation
27 has been served, the person issuing the notice shall file the notice
28 with the processing agency.

29 (3) If a person contests a notice of fare evasion or passenger
30 conduct violation, the issuing agency shall proceed in accordance
31 with Section 99581.

32 (e) In setting the amounts of administrative penalties for the
33 violations listed in subdivision (b), the City and County of San
34 Francisco, the Los Angeles County Metropolitan Transportation
35 Authority, the Santa Clara Valley Transportation Authority, the
36 Sacramento Regional Transit District, the Southern California
37 Regional Rail Authority, Long Beach Transit, Foothill Transit, *the*
38 *North County Transit District*, and the Alameda-Contra Costa
39 Transit District shall not establish penalty amounts that exceed the
40 maximum fine amount set forth in Section 640 of the Penal Code.

- 1 (f) A person who receives a notice of fare evasion or passenger
- 2 conduct violation pursuant to this section shall not be subject to
- 3 citation for a violation of Section 640 of the Penal Code.

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